

Agenda Date: March 27, 2002
Item Number: 4A

Docket No.: A-020334

Interpretive Statement: Filing requirements prior to issuance of securities

Staff: Fred Ottavelli, Senior Policy Strategist

Recommendation:

Issue a notice to interested persons requesting comment on the draft Interpretive Statement clarifying the circumstances under which a public service company should file in compliance with RCW 80.08.040 and 81.08.040.

Discussion:

RCW 80.08.040 and 81.08.040, and WAC 480-146-290 require that any public service company that undertakes to issue securities file certain information with the Commission before such issuance. The draft Interpretive Statement seeks to clarify when a public service company must file such information with the Commission.

Increased volatility and uncertainty in energy, communications and water markets heighten Staff's concern with how public service companies use the proceeds from proposed financings and the resultant impact upon their capital structures. The proposed clarification will assure that regulated companies provide the Commission with relevant and complete financing information on a timely basis, and that they are spared the burden of filing documents that do not provide relevant information.

Filings with the Commission should:

- (1) Designate the type of security;
- (2) Specify the purposes for which the issuance is made;
- (3) Describe the proposed issuance including the anticipated amount and terms; and
- (4) State why the transaction is in the public interest.

In the opinion of Staff, filing a Registration Statement with the Securities and Exchange Commission using a shelf registration process does not constitute undertaking the issuance of a security and therefore a filing with the Commission is not required under the provisions of RCW 80.08.040 and 81.08.040, and WAC 480-146-290. The information provided with a shelf registration statement is typically preliminary, and does not include the important terms of the issuances that may subsequently be made under the shelf registration. However, public service companies are encouraged to file Registration Statements with the Commission for informational purposes.

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At the time of filing, as much detail as available should be provided, such as term sheets, applicable board minutes, and offering circulars.

Conclusion:

In conclusion, Staff recommends that the Commission direct the Staff to issue a notice to interested persons requesting comment on the draft Interpretive Statement clarifying when a public service company undertakes to issue securities.

Attachment